

1 KEVIN V. RYAN (CASBN 118321)
United States Attorney

2 CHARLES B. BURCH (CASBN 79002)
3 Chief, Criminal Division

4 JEFFREY L. BORNSTEIN (CASBN 99358)
Assistant United States Attorney

5 450 Golden Gate Avenue, Box 36055
6 San Francisco, California 94102
Telephone: (415) 436-6873

7 Attorneys for Plaintiff

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12
13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 DESMOND MCQUOID,

17 Defendant.

No. CR-02-0319-CRB

PLEA AGREEMENT

18 I, Desmond McQuoid, ("Defendant"), and the United States Attorney's Office for the
19 Northern District of California ("the government") enter into this written plea agreement (the
20 "Agreement") pursuant to Rules 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal
21 Procedure:

22 The Defendant's Promises

23 1. I agree to plead guilty to Count Three of the captioned indictment charging me
24 with mail fraud, in violation of 18 U.S.C. § 1341, involving the mailing of a check in the amount
25 of \$8,463.00. The parties agree that the loss to the victim in Count Three is limited to \$8,463.00
26 but that for sentencing purposes, for other relevant conduct including charges that will be
27 dismissed, under U.S.S.G. § § 1B1.8 and 2F1.1, the amount of the loss/restitution is \$200,000. I
28

PLEA AGREEMENT
MCQUOID [CR-02-0319-CRB]

FILED

MAR 11 2003

RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 agree that the elements of the offense and the maximum penalties are as follows: (1) defendant
2 made up a scheme or plan to defraud or for obtaining money or property by making false
3 promises or statements, with the jury agreeing on at least one particular false promise or
4 statement that was made; (2) defendant knew that the promises or statements were false; (3) the
5 promises or statements were material, that is they would reasonably influence a person to part
6 with money or property; (4) defendant acted with intent to defraud; and (5) defendant used or
7 caused to be used, the mails to carry out or attempt to carry out an essential part of the scheme.

8 For Count Three:

- | | | | |
|----|----|---------------------------------|-----------|
| 9 | a. | Maximum prison sentence | 5 years |
| 10 | b. | Maximum fine | \$250,000 |
| 11 | c. | Maximum supervised release term | 2-3 years |
| 12 | d. | Mandatory special assessment | \$100 |
| 13 | e. | Restitution | \$200,000 |
| 14 | f. | Possible Deportation | |

15 2. I agree that I am guilty of the offense to which I will plead guilty. I also agree as
16 part of my plea not to challenge various allegations concerning the extent of my involvement in
17 other alleged acts beyond the Count to which I am pleading guilty. I also agree not to contest the
18 government's assertion that I am responsible for loss/restitution in the amount of \$200,000. I
19 agree that the following facts are true:

- 20 a. I was hired in 1984 by the San Francisco Unified School District as the
21 assistant director of custodians. Beginning in 1996, I began to purchase
22 computer parts and peripherals from US Machinery on behalf of the
23 School District. The School District would not allow me to purchase more
24 than \$500 in computer equipment and peripherals at any one time without
25 the approval of my superiors. I therefore instructed US Machinery to
26 create false invoices splitting the purchases into amounts less than \$500.
27 b. Also in 1996, I directed US Machinery to send purchase order invoices
28 through an alarm supply company that had an encumbrance with the

1 School District. Under the encumbrance, I was allowed to purchase
2 thousands of dollars in alarm equipment for the School District without
3 obtaining any additional approvals from my superiors.

- 4 c. I ordered computers and peripherals directly from US Machinery. The
5 computers and peripherals were either picked up at a US Machinery
6 location or shipped directly to the School District. I instructed US
7 Machinery to falsely describe the equipment in its invoice using various
8 names which made it appear the equipment was part of the security
9 systems supplied by the alarm supply company, when it was not. US
10 Machinery would then send the descriptions and prices to the alarm supply
11 company, who would prepare its own invoices using the false item
12 descriptions provided by US Machinery and add a mark up of
13 approximately 25%. After preparing the invoices, the alarm supply
14 company would send the invoices to the School District for payment.
- 15 d. Beginning in approximately 1998, US Machinery would directly bill the
16 School District for the computers and other equipment it supplied using
17 the same and similar false descriptions previously supplied to the alarm
18 supply company.
- 19 e. Beginning in 1996 and continuing thereafter, I periodically asked US
20 Machinery to provide me with goods and services for my personal benefit
21 and for one of several side businesses I was developing with others
22 including a distance learning project. These items included: food, DVDs,
23 t-shirts, furniture, computer and camera equipment, plane tickets to
24 Hawaii, New Zealand, Puerto Rico and other locales, hotel
25 accommodations, beach house rentals, and training courses.
- 26 f. I directed US Machinery to include the costs of these items in the invoices
27 submitted to the School District. These items would be hidden in the
28 invoices, either by using false names to describe the goods provided or by

1 inflating the price of the goods actually supplied, or both. US Machinery
2 kept separate records detailing these expenses which they would
3 periodically send to me.

4 g. I admit that I used and caused others to use the mails to carry out and
5 attempt to carry out this scheme. Many of the invoices and checks were
6 sent by mail to and from the US Machinery, the alarm supply company
7 and the School District.

8 h. I also admit that I participated in a separate scheme to submit false and
9 inflated funding requests to the USAC and SLD as part of the E-Rate
10 program beginning in 1999 and continuing until 2000. I allowed the
11 competitive bid process to be comprised by the consultants I worked with.
12 I also learned during the process that the contractors had submitted inflated
13 bid price information to the School District and the USAC and SLD but I
14 did not correct the information. Instead, I attempted to obtain a 10 million
15 dollar in-kind donation from the main contractor by having them purchase
16 computer ~~servers~~ ^{workstations} from US Machinery and then donate these servers to the
17 School District. I was trying to use the excess funds in the inflated bids to
18 pay for these products even though I knew that the USAC and SLD had
19 disallowed using their funds for these expenditures. The new School
20 District superintendent ultimately cancelled San Francisco's E-Rate
21 application before any of these funds were expended.

22 3. I agree to give up all rights that I would have if I chose to proceed to trial,
23 including the rights to a jury trial with the assistance of an attorney; to confront and cross-
24 examine government witnesses; to remain silent or testify; to move to suppress evidence or raise
25 any other Fourth or Fifth Amendment claims; to any further discovery from the government; and
26 to pursue any affirmative defenses and present evidence.

27 4. I agree to give up my right to appeal my conviction, the judgment, and orders of
28 the Court. I also agree to give up any right I may have to appeal my sentence, except that I

1 reserve my right to appeal an upward departure from the Guideline imprisonment range
2 determined by the Court and also to file a motion for a downward departure.

3 I waive any right I may have to assert the attorney-client privilege by declining to answer
4 any questions asked of me at any trial or hearing by a pro se defendant or counsel for any other
5 defendant in any case or matter in which I am cooperating with the government pursuant to this
6 agreement. See United States v. Henke, 222 F.3d 633 (9th Cir. 2000) (counsel for any defendant
7 who has joined a joint defense agreement may owe duty of loyalty to all defendants participating
8 in the joint defense agreement). Furthermore, I waive any right I may have to assert my right to
9 conflict-free representation by any attorney or pro se defendant where a conflict arises from that
10 attorney's or defendant's participation in a joint defense agreement in which I also was a party.

11 5. I agree not to file any collateral attack on my conviction or sentence, including
12 a petition under 28 U.S.C. §2255, at any time in the future after I am sentenced, except for a
13 claim that my constitutional right to the effective assistance of counsel was violated.

14 6. I agree not to ask the Court to withdraw my guilty plea at any time after it is
15 entered.

16 7. In return for the government's promises set out below, I agree to pay
17 restitution for all the losses caused by all the schemes or offenses with which I was charged in
18 this case, and I agree that the amount of restitution will not be limited to the loss attributable to
19 the count to which I am pleading guilty, pursuant to 18 U.S.C. § 3663(a)(3). Based on
20 information presently known to the parties, I understand that the amount of restitution owed is
21 \$200,000. I agree that I will make a good faith effort to pay any fine, forfeiture or restitution I
22 am ordered to pay. Before or after sentencing, I will, upon request of the Court, the government,
23 or the U.S. Probation Office, provide accurate and complete financial information, submit sworn
24 statements and give depositions under oath concerning my assets and my ability to pay, surrender
25 assets I obtained as a result of my crimes, and release funds and property under my control in
26 order to pay any fine, forfeiture, or restitution. I agree to pay the special assessment at the time
27 of sentencing.

28 8. I agree to cooperate with the U.S. Attorney's Office before and after I am

1 sentenced. My cooperation will include, but will not be limited to, the following:

- 2 a. I will respond truthfully and completely to any and all questions put to me,
3 whether in interviews, before a grand jury or at any trial or other proceeding;
- 4 b. I will provide all documents and other material asked for by the government;
- 5 c. I will testify truthfully at any grand jury, court or other proceeding as
6 requested by the government;
- 7 d. I will surrender any and all assets acquired or obtained directly or indirectly as
8 a result of my illegal conduct;
- 9 e. I will request continuances of my sentencing date, as necessary, until my
10 cooperation is completed;
- 11 f. I will tell the government about any contacts I may have with any
12 co-defendants or subjects of investigation, or their attorneys or individuals
13 employed by their attorneys;
- 14 g. I will not reveal my cooperation, or any information related to it, to anyone
15 without prior consent of the government;
- 16 9. I agree that the government's decision whether to file a motion pursuant to

17 USSG §5K1.1, as described in the government promises section below, is based on its sole and
18 exclusive decision of whether I have provided substantial assistance and that decision will be
19 binding on me. I understand that the government's decision whether to file such a motion, or the
20 extent of the departure recommended by any motion, will not depend on whether convictions are
21 obtained in any case. I also understand that the Court will not be bound by any recommendation
22 made by the government.

23 10. I agree not to commit or attempt to commit any crimes before sentence is
24 imposed or before I surrender to serve my sentence; violate the terms of my pretrial release (if
25 any); intentionally provide false information or testimony to the Court, the Probation Office,
26 Pretrial Services, or the government; or fail to comply with any of the other promises I have
27 made in this Agreement. I agree that, if I fail to comply with any promises I have made in this
28 Agreement, then the government will be released from all of its promises, but I will not be
released from my guilty plea.

11. If I am prosecuted after failing to comply with any promises I made in this
Agreement, then (a) I agree that any statements I made to any law enforcement or other

1 government agency or in Court, whether or not made pursuant to the cooperation provisions of
2 this Agreement, may be used in any way; (b) I waive any and all claims under the United States
3 Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal
4 Rules of Evidence, or any other federal statute or rule, to suppress or restrict the use of my
5 statements, or any leads derived from those statements; and (c) I waive any defense to any
6 prosecution that it is barred by a statute of limitations, if the limitations period has run between
7 the date of this Agreement and the date I am indicted.

8 12. I agree that this Agreement contains all of the promises and agreements
9 between the government and me, and I will not claim otherwise in the future.

10 13. I agree that this Agreement binds the U.S. Attorney's Office for the Northern
11 District of California only, and does not bind any other federal, state, or local agency.

12 The Government's Promises

13 14. The government agrees to move to dismiss any open charges pending against
14 the defendant in the captioned indictment at the time of sentencing.

15 15. The government agrees not to file or seek any additional charges against the
16 defendant that could be filed as a result of the investigation that led to the pending indictment
17 including the separate investigation into the E-Rate application fraud.

18 16. The government agrees not to use any statements made by the defendant
19 pursuant to this Agreement against him, unless the defendant fails to comply with any promises
20 in this agreement. The government may, however, tell the Court and the U.S. Probation
21 Department about the full extent of the defendant's criminal activities in connection with the
22 calculation of the Sentencing Guidelines.

23 17. If, in its sole and exclusive judgment, the government decides that the
24 defendant has cooperated fully and truthfully, provided substantial assistance to law enforcement
25 authorities within the meaning of U.S.S.G. §5K1.1, and otherwise complied fully with this
26 Agreement, it will file with the Court a motion under §5K1.1 and/or 18 U.S.C. §3553 that
27 explains the nature and extent of the defendant's cooperation and recommends a downward
28 departure.

1 18. If the defendant requests, and in the government's judgment the request is
2 reasonable, the government will recommend to the Department of Justice that it not initiate
3 removal proceedings against the defendant based on this plea and the resulting conviction. The
4 government has authority only to recommend the foregoing and the final decision whether to
5 grant such relief rests with the Department of Justice, which will make its decision in accordance
6 with applicable law.

7 18. Based on the information now known to it, the government will not oppose a
8 downward adjustment of two or three levels for acceptance of responsibility under U.S.S.G. §
9 3E1.1.


10 The Defendant's Affirmations

11 19. I confirm that I have had adequate time to discuss this case, the evidence, and
12 this Agreement with my attorney, and that she has provided me with all the legal advice that I
13 requested.

14 20. I confirm that while I considered signing this Agreement and, at the time I
15 signed it, I was not under the influence of any alcohol, drug, or medicine.


16 21. I confirm that my decision to enter a guilty plea is made knowing the charges
17 that have been brought against me, any possible defenses, and the benefits and possible
18 detriments of proceeding to trial. I also confirm that my decision to plead guilty is made
19 voluntarily, and no one coerced or threatened me to enter into this agreement.

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21 Dated: March 4, 2003


22 DESMOND MCQUOID
23 Defendant
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KEVIN V. RYAN
United States Attorney

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3 Dated: March ¹¹ 4, 2003


JEFFREY L. BORNSTEIN
Assistant United States Attorney

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6 I have fully explained to my client all the rights that a criminal defendant has and all
7 the terms of this Agreement. In my opinion, my client understands all the terms of this
8 Agreement and all the rights he is giving up by pleading guilty, and, based on the information
9 now known to me, his decision to plead guilty is knowing and voluntary.

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11 Dated: March 4, 2003


RANDY SUE POLLOCK, ESQ.
Attorney for Defendant